The Viability of Establishing a State Administered Catastrophic Reinsurance Fund for the Utility and Telecommunications Industries

2005 Interim Project

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Summary

This overview addresses the viability of establishing a state administered catastrophic reinsurance fund for the utility and telecommunications industries as another method to mitigate storm costs recovery. This fund would be similar to the Florida Catastrophic Insurance Fund (CAT Fund) for residential property insurers. A comparative analysis was conducted of the current options used for storm cost recovery and the current structure of the CAT Fund for property insurance to determine the significant parallels needed to create a cost-effective utility/telecommunications reinsurance fund.

Further, the data used were gathered from telecommunications companies, electric utilities, Office of Public Counsel, Public Service Commission, and CAT Fund staff. It is noteworthy to share that due to confidentiality for some information provided the report uses industry-wide data.

Although beyond the scope of this comparative assessment, some of the data were used in contrast with other ideas to determine if any options other than a CAT fund may be used to address lessening the impact of storm cost recovery. From this subsequent review, findings indicate that options such as more frequent updating of storm accruals to reflect utility growth, or establishing storm recovery clauses, similar to clauses for items such as fuel and environmental costs, or cost deferrals may warrant further economic and cost analysis reviews.

In conclusion, based on the information provided, the current staff findings indicate to implement a utility and telecommunications CAT reinsurance fund it would require establishing a new agency or a section within an existing agency, with three positions, and about a $3 million annual operating budget. Additionally, some Public Service Commission orders and approved rate settlement agreements would also need to be vacated.

Introduction

The past two years have brought significant amounts of tropical weather to Florida, with the state being impacted by four hurricanes in both 2004 and 2005. This has caused the utility and telecommunications industries to spend billions of dollars restoring service. Following the 2004 hurricanes, some companies received permission from the Public Service Commission (PSC) to assess customer surcharges in order to recover some storm related costs. In 2005, legislation was enacted to assist investor-owned electric utilities and telecommunications companies with carrier-of-last-resort obligations to recover 2004 hurricane costs.

The 2005 hurricane season also brought costs related to more hurricanes. The utility and telecommunications companies may seek further relief from the PSC in order to recover these costs.

Background

Tropical Storms and Hurricanes

On August 24, 1992, Hurricane Andrew made landfall in South Florida causing $26.5 billion in damage, and, at that time, it was the costliest hurricane on record.[1] Following Hurricane Andrew, the electric utilities found it cost prohibitive to obtain commercial insurance on their transmission and distribution facilities.[2] The PSC allowed the investor-owned electric utilities to self-insure these facilities through storm reserves.[3] In establishing the storm reserves, the PSC indicated that in the event of significant storm damage the electric utilities could petition the PSC for appropriate regulatory action and this request for cost recovery would be expeditiously reviewed.[4]

During August and September 2004, Florida was impacted by a tropical storm and four hurricanes that caused significant amounts of damage. The table below lists the storms, their landfalls, and damage estimates:

Storm[5]	Category at Landfall[6]	Landfall Date	Landfall Location	Damage Estimate[7]	Rank in Costliest (through 2004)
Bonnie	Tropical Storm	August 12	Florida Panhandle	Insignificant	N/A
Charley	4	August 13	Cayo Costa, Florida	$15 Billion	2
Frances	2	September 5	Sewall's Point, Florida	$8.9 Billion	4
Ivan	3	September 16	Gulf Shores, Alabama	$14.2 Billion	3
Jeanne	3	September 26	Stuart, Florida	$6.9 Billion	6

Table 1: 2004 Tropical Events Impacting Florida

[1] National Hurricane Center (NHC). *Costliest U.S. Hurricanes 1900-2004 (Unadjusted)* http://www.nhc.noaa.gov/pastcost.shtml (August 29, 2005). Hurricane Katrina is expected to be the costliest hurricane on record.
[2] The utilities are still able to obtain insurance on their generating facilities and other buildings.
[3] See generally, PSC Order No. PSC-93-0918-FOF-EI, issued June 17, 1993. Prior to this time, the companies had storm reserves for items such as insurance deductibles.
[4] PSC Order No. PSC-93-1522-FOF-EI, issued October 15, 1993.
[5] Category and Landfall Information: National Climate Data Center (NCDC) *Climate of 2004-Atlantic Hurricane Season.*
http://www.ncdc.noaa.gov/oa/climate/research/2004/hurricanes04.html (October 18, 2005)
[6] On The Saffir-Simpson Scale for Tropical Cyclones a Tropical Storm has winds of 39-73 miles per hour. For hurricanes a Category 1 is winds of 74-96 miles per hour, Category 2 is winds of 96-110 miles per hour, Category 3 is 111-130 miles per hour, Category 4 is 131-155 miles per hour, and Category 5 is 156 or more miles per hour.
http://www.ncdc.noaa.gov/oa/climate/research/2005/2005-atlantic-trop-cyclones.html (November 10, 2005).
[7] Damage Estimate and Rank: NHC *Costliest U.S. Hurricanes 1900-2004 (Unadjusted)* http://www.nhc.noaa.gov/pastcost.shtml (October 18, 2005).

The 2005 hurricane season was a record breaking year, with 27 named storms. Fourteen of the named storms became hurricanes, with four major hurricanes, category 3 or above, making landfall in the United States (Dennis, Katrina, Rita, and Wilma).[8] Six tropical systems also made landfall in Mexico.[9] Based on central pressure, Hurricanes Wilma, Rita, and Katrina were respectively the first, fourth, and sixth most intense Atlantic hurricanes ever recorded.[10]

Several tropical storms and hurricanes either made landfall in or came near Florida. The following table lists the storm's category and landfall information:

Storm[11]	Category at Florida Landfall	Landfall Date	Landfall Location	Minimum Damage Estimate
Arlene	Tropical Storm	June 11	Pensacola, Florida	Insignificant
Dennis	3	July 10	Pensacola, Florida	$2 Billion
Katrina[12]	1	August 25	Hollywood, Florida	$100 Billion
Rita[13]	1	September 20	Went through the Florida Straits	$10 Billion
Tammy	Tropical Storm	October 5	Jacksonville, Florida	Insignificant
Wilma[14]	3	October 24	Everglades City, Florida	$12 Billion

Table 2: 2005 Tropical Events Impacting Florida

Subsequent to their impacts on Florida, Hurricanes Katrina and Rita became a category 5 hurricane in the Gulf of Mexico and made landfall on the Gulf Coast. On August 25, Hurricane Katrina made landfall in South Florida as a category 1 hurricane, but it did not lose much strength before exiting into the Gulf of Mexico. On August 29, Hurricane Katrina made landfall in Grand Isle, Louisiana and along the Mississippi/Louisiana boarder and caused significant damage along the Louisiana, Mississippi and Alabama Gulf coast. Immediately following Hurricane Katrina there were breaks in the levees surrounding New Orleans, Louisiana causing 80 percent of the city to flood.[15] A

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[8] NOAA, *Noteworthy Records of the 2005 Atlantic Hurricane Season,* http://www.noaanews.noaa.gov/stories 2005/s254b.htm (November 29, 2005). Hurricane Epsilon did not become a hurricane until December 2, 2005. National Hurricane Center, http://www.nhc.noaa.gov/ (December 2, 2005)

[9] These systems were Tropical Storms Brett, Gert, and Jose; and Hurricanes Emily Stan, and Wilma. NCDC, *2005 Atlantic Tropical Cyclones,* http://www.ncdc.noaa.gov/oa/research/2005/2005-atlantic-trop.-cyclones.html (December 2, 2005).

[10] NOAA, *Noteworthy Records of the 2005 Atlantic Hurricane Season,* http://www.noaanews.noaa.gov/stories 2005/s254b.htm (November 29, 2005).

[11] NCDC, Climate *of 2005-Atlantic Hurricane Season.* http://www.ncdc.noaa.gov/oa/climate/research/2005/hurricanes05.html (November 16, 2005). This is the source for information on Arlene, Dennis, Ophelia, Tammy, and damage estimates

[12] Hurricane Katrina: NCDC, *Climate of 2005-Summary of Hurricane Katrina.* http://www.ncdc.noaa.gov/oa/climate/research/2005/katrina.html (October 18, 2005)

[13] Hurricane Rita: NCDC, *Climate of 2005-Summary of Hurricane Rita.* http://www.ncdc.noaa.gov/oa/climate/research/2005/rita.html (October 18, 2005)

[14] Hurricane Wilma: NCDC, *Climate of 2005-Summary of Hurricane Wilma.* http://www.ncdc.noaa.gov/oa/climate/research/2005/wilma.html (November 16, 2005).

[15] NCDC, *Climate of 2005-Summary of Hurricane Katrina.* http://www.ncdc.noaa.gov/oa/climate/research/2005/katrina.html (October 18, 2005)

preliminary estimate indicates at least $100 billion in damage, making it the costliest hurricane in history.[16]

On September 20, Hurricane Rita went through the Florida Straits as a category 2 hurricane causing tropical storm force winds and hurricane force gusts in the Florida Keys. Hurricane Rita rapidly intensified in the Gulf of Mexico and on September 24 made landfall along the Texas/Louisiana boarder as a strong category 3 hurricane. An initial estimate of the total Hurricane Rita related insured losses is $4 to 5 billion.[17]

Hurricane Wilma, prior to making landfall in the Yucatan Peninsula, was the most intense Atlantic hurricane ever recorded. On October 24, Hurricane Wilma made landfall near Everglades City, Florida as a category 3 hurricane and sped across South Florida.[18] Preliminary estimates put the losses related to Hurricane Wilma at $12 billion.[19]

Prior to 2004, Florida was fortunate regarding the landfall of major (category 3 or above) hurricanes. Between 1966 and 2003, the only major hurricanes to make landfall in Florida were Andrew in 1992 and Opal in 1995. Prior to 1966, 14 major hurricanes made landfall in Florida between 1928 and 1965. Since 1995, there has been an increase in major hurricane activity in the Atlantic basin, but Opal was the only major hurricane that made landfall in Florida.[20] The alleged cause of the increased hurricane activity is multidecadal fluctuations related to surface temperature abnormalities in the North Atlantic.[21]

While there has been an increase in Atlantic hurricane activity since 1995, the more recent increase in these systems making landfall is due to upper level steering currents moving these storms to shore. While it is expected that the next 15 to 20 years will have increased hurricane activity, it is statistically unlikely that future hurricane seasons will have the number of major hurricanes making landfall as in 2004 and 2005.[22]

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[16] NCDC, *Climate of 2005-Atlantic Hurricane Season.* http://www.ncdc.noaa.gov/oa/climate/research/2005/hurricanes05.html (November 16, 2005).

[17] NCDC, *Climate of 2005-Summary of Hurricane Rita.* http://www.ncdc.noaa.gov/oa/climate/research/2005/rita.html (October 18, 2005)

[18] NCDC, *Climate of 2005-Summary of Hurricane Wilma.* http://www.ncdc.noaa.gov/oa/climate/research/2005/wilma.html (November 16, 2005).

[19] NCDC, *Climate of 2005-Atlantic Hurricane Season.* http://www.ncdc.noaa.gov/oa/climate/research/2005/hurricanes05.html (November 16, 2005).

[20] William Gray and Philip Klotzbach, *Summary of 2004 Atlantic Tropical Cyclone Activity and Verification of Author's Seasonal and Monthly Forecasts*, Department of Atmospheric Science, Colorado State University. November 19, 2004. http://hurricane.atmos.colostate.edu/Forecasts/2004/nov2004

[21] NCDC, Climate *of 2005-Atlantic Hurricane Season.* http://www.ncdc.noaa.gov/oa/climate/research/2005/hurricanes05.html (November 16, 2005).

[22] William Gray and Philip Klozbach, *Summary of 2005 Atlantic Tropical Cyclone Activity and Verification of Author's Seasonal and Monthly Forecasts,* Department of Atmospheric Science, Colorado State University, November 18, 2005. http://hurricane.atmos.colostate.edu/forecasts/2005/nov2005/

Electric Utility Industry

The Florida electric utility industry is comprised of five investor-owned utilities, 34 municipal electric utilities, and 18 rural electric cooperatives. These utilities range in size from small municipal utilities with a thousand customers to Florida Power & Light (FPL) with over four million customers. Florida has approximately 8.9 million electric utility customers.[23]

The investor-owned electric-utilities are regulated by the PSC, pursuant to ch. 366, F.S. for all aspects of their operations including rates, reliability, service, and safety. The PSC also has limited jurisdiction over municipal electric utilities and rural electric cooperatives for areas such as safety, reliability, rate structure, and territorial disputes.[24]

Telecommunications Industry

There are 10 incumbent local exchange carriers (ILECs) and 182 competitive local exchange carriers (CLECs) offering service in Florida.[25] The ILECs have carrier of last resort obligations under s. 364.025, F.S., which requires them to provide "basic local telecommunications service within a reasonable time period to any person requesting such service within the company's service territory." This obligation will expire January 1, 2009.

Pursuant to s. 364.051, F.S., nine ILECs have elected price-cap regulation,[26] which limits their ability to raise their basic local telephone service rates beyond the rate of inflation less one percent. Section 364.051(4), F.S., provides that after a compelling showing of changed circumstances, the ILEC may petition the PSC for a greater increase in its basic local service rates. As of May 31, 2005, the ILECs had about 9.4 million end user switched access lines and the competitive carriers had about 2.1 million access lines.[27]

Storm Reserves

Following Hurricane Andrew, the electric utilities petitioned the PSC to establish self-insurance programs for storm damage. The PSC authorized investor-owned electric

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[23] Florida Public Service Commission, *Statistics of the Florida Electric Utility Industry-2004.*, September 2005.

[24] Section 366.04(2), F.S., provides the PSC's authority over electric utilities including municipal owned electric utilities and rural electric cooperatives.

[25] As of May 31, 2005, there were 428 CLECs certificated by the PSC, but only 182 actually offering service. Florida Public Service Commission, *Report on the Status of Competition in the Telecommunications Industry as of May 31, 2005, p. 1.* Section 364.02(8), F.S. defines "local exchange telecommunications company" as "any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995." Any company that is certified on or after July 1, 1995 is a "competitive local exchange telecommunications company" as defined in s. 364.02(5), F.S.

[26] Frontier Communications of the South is the only ILEC that has not elected price-cap regulation.

[27] Florida Public Service Commission, *Report on the Status of Competition in the Telecommunications Industry as of May 31, 2005, p. 20.*

utilities to self-insure their transmission and distribution facilities and to establish an annual accrual to the storm damage reserve.[28]

In general, a reserve fund is a way to levelize the earnings impact of storms by expensing a certain amount of storm costs every year. When there is a storm, storm expenses are charged to the reserve, and the only storm related earnings impact is to the annual storm accrual.[29] The reserve may either be funded or unfunded. With a funded reserve, the amount collected from customers is literally reserved, or set aside, in a special fund to be used in the event of a storm.[30] With an unfunded reserve, the utility uses an accounting practice where the amount collected is entered as a liability on the utility's books, but the money is not set aside to meet this specific obligation.

Telecommunications companies do not have storm reserves set-up.[31] And reasonably priced insurance is generally not available on their outside plant such as poles and wires. However, the companies are able to obtain insurance on their other real property such as central offices.

Since 1992, various electric and telecommunications companies have looked into obtaining insurance on their outside plant and have been unable to obtain it at a reasonable price. Based on information received, insurance is generally not economically available on outside plant. In 2005, one telecommunications company was able to obtain insurance on its outside plant. One electric utility pointed out that there have been a couple of unsuccessful attempts to create an industry-wide electric insurance pool.

2004 Storm Recovery

The 2004 hurricanes caused power outages and damage to various facilities. In order to restore power, the investor owned electric utilities were required to expend significantly more than their respective storm damage reserves. The following table shows an estimate of the amount electric utilities spent on restoration following the hurricanes:

[28] Prior to Hurricane Andrew, the utilities had storm reserves set up to cover the deductibles on their insurance policies. See generally, PSC Order No. PSC-93-0918-FOF-EI, issued June 17, 1993.
[29] Bradley W. Johnson, *After the Disaster: Utility Restoration and Cost Recovery*, prepared for the Edison Electric Institute, February 2005.
[30] FPL is the only electric utility that has utilized a funded reserve.
[31] BellSouth had a $10 million dollar annual accrual for storm damage from 1994 to 1997 as a result of a rate stipulation. (PSC Order No. PSC-94-0172-FOF-TL, issued February 11, 1994) When BellSouth became being price regulated in 1997, the accrual was discontinued.

Utility	Estimated Storm Damage Costs (Net of Insurance)	Estimated Storm Damage Reserve	Estimated Damage Short-Fall	Damaging Storms[32]
Florida Power and Light[33]	$890 Million	$357 Million	$533 Million	Charley, Frances, Jeanne
Gulf Power Company[34]	$124 Million	$28 Million	$97 Million	Ivan
Progress Energy Florida[35]	$366 Million	$47 Million	$319 Million	Charley, Frances, Ivan, Jeanne
TECO Energy[36]	$73 Million	$42 Million	$31 Million	Charley, Frances, Jeanne
Total	$1,452 Million	$474 Million	$980 Million	

Table 3: 2004 Storm Recoveries for Electric Utilities

According to the telecommunications companies, they spent about $330 million to recover from the 2004 hurricanes.[37]

Following the 2004 hurricanes, the PSC approved the recovery of storm related costs for these companies. For example, the PSC approved the recovery of $442 million through a surcharge for FPL.[38] This charge is over a three year period and will add about $1.68 to the average residential customer's bill.[39] The PSC also approved a stipulated settlement in FPL's general rate proceeding, which suspends FPL's annual storm accrual and requires an appropriate target storm reserve be determined in a separate proceeding. Following that proceeding, the target reserve may be obtained through a separate surcharge or through securitized bonds.[40]

For Progress Energy (Progress), the PSC approved the recovery of $231.6 million in operating and maintenance expenses from its rate payers through a storm recovery surcharge.[41] This charge is over a two year period and will add about $3.35 to the average residential customer bill. The PSC recently approved a stipulated settlement in Progress's general rate proceeding, which allows Progress to petition the PSC to securitize bonds, increase base rates, or add "a separate charge to collect and accrue reserves for non-catastrophic storms."[42] Additionally, Progress will continue its annual accrual of $6 million to the storm reserve.

The PSC approved a stipulation and settlement between Gulf Power Company's (Gulf), the Office of Public Counsel (OPC), and the Florida Industrial Power Users Group

[32] Tropical Storm Bonnie is not included in these damage estimates.
[33] PSC Order No. PSC-05-0937-FOF-EI, issued September 21, 2005.
[34] PSC Order No. PSC-05-0250-PAA-EI, issued March 4, 2005.
[35] PSC Order No. PSC-05-0748-FOF-EI, issued July 14, 2005.
[36] PSC Order No. PSC-05-0675-PAA-EI, issued June 20, 2005.
[37] This is an industry-wide figure based on responses to a staff data request. The amount spent by some of the companies is confidential.
[38] PSC Order No. PSC-05-0937-FOF-EI, issued September 21, 2005.
[39] The average residential customer bill is for 1000 kWh of usage.
[40] PSC Order No. PSC-05-0902-S-EI, issued September 14, 2005.
[41] PSC Order No. PSC-05-0748-FOF-EI, issued July 14, 2005. The company deferred $55 million in capital expenses to its rate proceeding.
[42] PSC Order No. PSC-05-0945-S-EI, issued September 28, 2005

(FIPUG), relating to the recovery of Gulf's incurred cost from Hurricane Ivan.[43] The stipulation calls for $53.2 million to be recovered through a surcharge over two years. The surcharge on the average residential bill is $2.71.

The PSC also approved a stipulation between Tampa Electric Company (TECO), OPC, and FIPUG regarding the accounting treatment of its storm related costs.[44] This stipulation did not result in a surcharge to TECO's customers.

For its natural gas division, Florida Public Utilities Company (FPUC) filed a petition with the PSC requesting a surcharge for 2004 storm cost recovery. The PSC approved the recovery of $500,187 in storm charges over 30 months. For an average residential customer bill of 25 therms, the monthly surcharge would be $0.1745.[45]

Sprint and OPC filed a joint petition to approve a stipulation for a storm recovery surcharge. The parties agreed to have about $30.3 million in storm recovery costs recovered from Sprint's basic wireline customers. However, the parties did not agree on whether or not these expenses were "changed circumstances" under s. 364.051(4), F.S. The PSC determined that Sprint's hurricane costs incurred in 2004 met the "changed circumstances" criteria of s. 364.051(4), F.S. and allowed Sprint to recover $30.3 million from its basic service customers through a $.85 per month surcharge.[46]

2005 Storm Recovery

At the printing of this report, the final amounts for storm related damage for 2005 were still being calculated. As a result, staff is providing a cumulative estimate.

The 2005 hurricane season was also a busy one for Florida's utility and telecommunications companies, with them spending millions on hurricane recovery. The preliminary estimates for hurricane related expenses are $1 billion for the investor-owned electric utilities and $115 million for the telecommunications companies.

2005 Storm Damage

When Hurricane Dennis made landfall near Pensacola, about 242,000, or 60 percent of Gulf's customers were without power.[47]

When Hurricane Katrina made landfall in South Florida, 1,453,000 FPL customers were affected. The largest impact to FPL from Katrina was in South Florida where 60 percent of its customer base is located.[48] When Hurricane Katrina made landfall in Louisiana

[43] PSC Order No. PSC-05-0250-PAA-EI, issued March 4, 2005.
[44] PSC Order No. PSC-05-0675-PAA-EI, issued June 20, 2005.
[45] PSC Order No. PSC-05-1040-PAA-GU, issued October 25, 2005.
[46] PSC Order No. PSC-05-0946-FOF-TL, issued October 3, 2005.
[47] Gulf Power Company, Hurricane Ivan/Dennis/Katrina Fact Sheet. Provided to the House Utilities & Telecommunications Committee on September 13, 2005.
[48] FPL presentation to the House Utilities & Telecommunications Committee on September 13, 2005.

and Mississippi, the western portion of Gulf's service territory had tropical storm force winds and 130,000 of its customers lost power.[49]

Hurricane Rita impacted South Florida and the Florida Keys as it went through the Florida Straits as a Category 1 storm before it impacted the Texas and Louisiana Gulf Coasts. While over one million people lost power with this storm, only about 100,000 of those were in Florida and their service was quickly restored.[50]

On October 24, 2005, Hurricane Wilma made landfall near Everglades City and moved across South Florida. Wilma caused 3.2 million of FPL's 4.3 million customers to lose power.[51] This was the largest power outage ever related to a single weather event in the United States, primarily due to Wilma's large size and the destructive south side impacting densely populated South Florida.[52]

Recent Legislative Action

Electric Industry

In 2005, s. 366.8260, F.S., was created to allow electric utilities to recover storm-related costs through the issuance of bonds. With this legislation, the investor-owned electric utilities may go to the PSC to request a financing order to issue securitized bonds to cover their storm-recovery costs and/or replenish their storm reserve. Additionally, while securitization requires authorization by the state, it is not a request for an appropriation from the state or a pledge of the state's full faith and credit.[53]

Securitization is defined as the "creation of a financial security that is backed by a revenue stream that is pledged to pay the principal and interest of that security. Securitization requires the creation of a transferable property right to be collected from the utility's ratepayers as a 'nonbypassable' obligation."[54] Other utilities have used securitization to recover stranded investment following the restructuring of the electric industries in various states, but it has not been used before to recover costs associated with natural disasters.

Further, securitization provides the utility with the up-front funds to replenish their reserve funds for the upcoming hurricane season and recover the amounts prudently incurred above the reserve fund balances. With other types of storm-recovery, monies are received in increments throughout the recovery period. As a result, securitization gives the bonds a better rating than if there were no secure stream of revenue.

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[49] Gulf Power Company, Hurricane Ivan/Dennis/Katrina Fact Sheet. Provided to the House Utilities & Telecommunications Committee on September 13, 2005.
[50] NCDC, *Climate of 2005-Summary of Hurricane Rita.* http://www.ncdc.noaa.gov/oa/climate/research/2005/rita.html (October 18, 2005)
[51] FPL, October 25, 2005, Outage Numbers by County. http://www.fpl.com/storm/contents/wilma_outage.shtml (October 25, 2005).
[52] "S. Florida could stay in the dark for weeks," *St. Petersburg Times,* October 26, 2005. http://www.sptimes.com/2005/10/26/State/S_Florida_could_stay_.shtml (October 26, 2005)
[53] Presentations by Mark Cicchetti and Susan Clark to the House Utilities & Telecommunications Committee on January 11, 2005.
[54] Presentation by Mark Cicchetti to House Utilities & Telecommunications Committee on January 11, 2005.

Telecommunications Industry

For telecommunications companies, s. 364.051(4), F.S. was amended in 2005 to provide that damage to telecommunications facilities of companies with carrier-of-last-resort obligations caused by a named tropical system, occurring after June 1, 2005, is considered a compelling showing of changed circumstances. Under this provision, the ILEC, following PSC approval, may assess a charge of up to 50 cents per month, per customer line, for a period of not more than 12 months. This provision also places a minimum amount of costs to be incurred before a carrier with more than one million access lines may petition the PSC.[55]

Florida Catastrophe Insurance Fund

In 1993, the state created the Florida Catastrophe Insurance Fund (CAT Fund) as a state run reinsurance program to provide residential property insurers a reinsurance mechanism for catastrophic hurricane losses.[56] This fund is administered by the State Board of Administration (SBA). The SBA appoints a nine member advisory council to provide it information and advice.[57] Participation in this program is mandatory for all companies writing property insurance policies in Florida.

Property insurers pay premiums into the CAT Fund based on the location, construction type, and deductible levels of the insurance polices written. Each insurer paying into the CAT Fund has a retention, a threshold amount of losses, below which an insurer is not entitled to reimbursement from the fund.[58]

With the CAT Fund program, insurers can opt for the reimbursement of 45, 75, or 90 percent of its losses from covered events in excess of the retention, plus 5 percent of reimbursed losses to cover loss adjustment expenses.

If the premiums received by the CAT Fund are insufficient to pay losses, revenue bonds may be issued and an emergency assessment can be placed on all property and casualty insurers, excluding workers compensation and medical malpractice premiums.[59] The state is not liable for any revenue shortfalls of the CAT Fund.

Section 215.555(1)(f), F.S., provides that it is essential for the revenues paid into the fund to be exempt from federal taxes; therefore, the Legislature intends for the CAT Fund to be a state trust fund administered by the State Board of Administration.

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[55] The carriers with more than one million access lines are BellSouth, Sprint, and Verizon. Carriers with between one million and three million access lines must have damage in excess of $1.5 million. Carriers with at least three million access lines must have damage in excess of $5 million.

[56] The statutes regarding the Florida Hurricane Catastrophe Fund are contained in s. 215.555, F.S.

[57] S. 215.555(8), F.S., provides that the council consist of "an actuary, a meteorologist, an engineer, a representative of insurers, a representative of insurance agents, a representative of reinsurers, and three consumers who shall also be representatives of other affected professions and industries."

[58] S. 215.555(2)(e), F.S.

[59] The exemption for medical malpractice premiums expires on June 1, 2007.

Section 215.555(6)(d), F.S., creates the Florida Hurricane Catastrophe Fund Finance Corporation as a public benefits corporation to "provide a mechanism necessary for the cost-effective and efficient issuance of bonds" necessary to provide the required reimbursements through the CAT Fund.

Establishing a State Administered Catastrophic Reinsurance Fund for the Utility and Telecommunications Industries

This overview addresses the viability of establishing a state administered catastrophic reinsurance fund for the utility and telecommunications industries as another method to further mitigate storm costs recovery. A comparative analysis of current options of storm cost recovery and the current CAT Fund for property insurance to determine the significant parallels needed to create a cost effective utility/telecommunications reinsurance fund.

Committee staff requested data from all investor-owned electric utilities, incumbent local exchange telecommunications companies, the Florida Municipal Electric Association and the Florida Electric Cooperative Association. AT&T also provided a response to the telecommunications data requests. Staff requested information about risk management procedures, current storm reserves (if any), accounting practices, customer bases, miles of facilities, and the potential damage to various types of facilities, and the damage incurred in past storms. Inquires as to whether or not any charge associated with the establishment of a fund could be recovered from current rates was also requested. Following the 2005 hurricanes, supplemental information was requested from the companies.

Committee staff also met with SBA and PSC staffs on the issue. Staff also asked for comments from OPC on how various rate agreements and statutes would impact the ability of various companies to recover their costs related to implementing a fund. Staff also reviewed various web sites containing data related to the industries and hurricanes.

Analysis of Findings

Facilities and Types of Damage.

Both utility and telecommunications companies have above ground and below ground facilities. Both types of facilities are subject to damage from hurricanes and other weather events. However, much of the damage associated with above ground facilities is due to structural damage such as broken wires and poles, including fallen trees and branches on to various parts of the facilities.

With below ground facilities, damage is often caused by flooding that submerges the equipment. Saltwater intrusion can also damage below ground facilities. Damage can also occur to above ground equipment associated with below ground facilities. Since underground equipment cannot be visually inspected, it is often more difficult and time consuming to pinpoint damage to underground facilities.

Many factors go into determining the cost of replacing facilities. Some of these factors include type of terrain, design of the system, location of the facilities, type of construction, and whether or not other facilities are attached to a facility (i.e. telephone

and electric facilities being on the same poles). With all of these factors, it is difficult to determine the cost to replace specific facilities in the event of a catastrophic loss. Depending on the type and size of the facility and the engineering requirements, it could cost from a few thousand dollars to a million dollars to replace a mile of facilities.

There are approximately 176 thousand miles of electric lines located in Florida. Approximately two-thirds of them are overhead and one-third is below ground. The vast majority of the below-ground facilities are distribution lines. Of the 176 thousand miles of lines, about 15 thousand are transmission and about 160 thousand are distribution.[60] Based on the information provided, on average, the cost to replace a mile of underground electric distribution facilities is two to four times as much as the cost of replacing a mile of above ground facilities. For transmission facilities, the cost differential may be over ten times the cost to replace below ground facilities than to replace above ground facilities.

Telecommunications companies have approximately 230 thousand miles of facilities in Florida. Approximately 15 percent of these facilities are above ground with the remainder of the facilities below ground.[61] Similar to the electric utilities, it costs significantly more to replace below ground facilities than it does to replace above ground facilities.

Historical Damage Costs

The data request made to the utility and telecommunications companies asked for information concerning their storm recovery expenses since 1992. In most years since 1994, at least one utility has incurred expenses relating to tropical storm or hurricane damage. It is not always possible to associate the storm charges incurred in one year to the storms that actually occurred that same year. For example, as late as 1998, FPL was still making repairs related to 1992's Hurricane Andrew. It is difficult to do a comparison between costs incurred by utility and telecommunications companies and the total amount of damage from a given storm. The companies may not have the amount spent on storm related repair for specific storms, but may have an annual storm related cost. Additionally, the cost of one specific storm may be charged over multiple years.

Accounting Treatment of Storm Costs

The electric utilities and telecommunications companies were asked about the accounting treatment of storm related capital and operating expenses. In general, the electric utilities charge all storm related operating expenses (such as call center activity) to the storm reserve. For capital expenses, the cost of the investment under normal operating conditions is charged to the appropriate capital accounts, with extraordinary costs (such as expedited materials delivery charges) charged to the storm reserve accounts.

For telecommunications companies, operating expenses related to storm recovery are charged to the appropriate expense accounts with capital costs charged to the appropriate capital accounts.

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[60] Information compiled from responses to data requests to the electric utility companies.
[61] Information compiled from responses to data requests to the telecommunications companies.

Financial Considerations

The investor-owned electric utilities make PSC approved annual accruals to a storm-damage reserve in order to recover storm related operating expenses or extraordinary capital expenses.[62] While these reserves are primarily used in hurricane recovery, these reserves can also be used for other events such as tornados and fires. The costs charged to the reserve tend to be those associated with storm damage and restoration activity including labor, materials and supplies, the use of outside utilities, and transportation. In recent surcharge requests, the PSC reviewed the storm related costs to determine their reasonableness.

Electric cooperatives and municipal utilities are able to obtain relief from the Federal Emergency Management Agency (FEMA) to offset some of their storm-related costs. Their FEMA eligibility is through the Public Assistance Program, where the federal government's share of assistance is at least 75 percent of eligible costs for emergency measures and permanent restoration. It is up to the state to determine how it will split the non-federal share with the utility.[63] Municipal utilities are sometimes part of a city's special loss reserve which is only available in catastrophic events, and the use of the funds is not limited to the electric utility.[64] In 2004, President Bush issued a letter authorizing 90 percent federal funding for disaster relief. In response, Governor Bush issued an Executive Order dividing the non-federal share equally between the state and local governments.[65] This order does not apply to electric cooperatives.

While Florida's investor-owned electric utilities were not eligible to receive relief from the federal government for the four hurricanes in 2004, there is legislation pending in the United States' Congress that would provide relief to Louisiana's privately owned utilities to recover costs related to Hurricane Katrina. The pending Louisiana Katrina Reconstruction Act[66] allows privately owned electric and gas utilities in Louisiana to be compensated up to $2.5 billion per utility for direct and incremental losses resulting from Hurricane Katrina. There is also another provision of the bill that provides emergency grants for the construction of telecommunications facilities either damaged or destroyed by Hurricane Katrina.

Consideration Factors for a Fund

In this overview, staff looked at the major requirements for establishing a catastrophic fund. Consequently, this is not an exhaustive list of all the issues.

1. Which Losses may be Recoverable from the Fund

This consideration will assist in establishing the appropriate size of the fund. At this time, there are no PSC rules specifying what is recoverable through an electric storm

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[62] As part of its PSC approved stipulation concerning its base rates, FPL will stop accruing a storm reserve on January 1, 2006.
[63] Federal Emergency Management Agency Website: http://www.fema.gov/rrr/ap/overview.shtm (September 13, 2005).
[64] Response to staff data request by the Florida Municipal Electric Association
[65] Governor's Executive Order No. 04-229, issued October 8, 2004.
[66] Louisiana Katrina Reconstruction Act (S. 1766), Introduced in Senate on September 22, 2005, Subtitle D-Privately Owned Utility Restoration.

reserve.[67] The PSC rules concerning the reserve allow the reserve to be created and to provide for uninsured losses as well as deductibles associated with property insurance policies.

When Progress requested a storm-recovery surcharge for the 2004 hurricanes, the PSC denied Progress's normal operating costs from the charges to the storm reserve, based on its normal operating budget for that time period.[68] Other issues considered by the PSC included whether or not to charge storm-related uncollectible revenue to the reserve, whether or not various rate settlements prohibit the recovery sought in the storm petitions, as well as whether or not any of the costs associated with storm recovery should be apportioned to the stockholders. Also at issue was should the cost to remove damaged plant be recovered from the storm reserve.

In FPL's request for a storm-recovery surcharge, the PSC determined that the power outages caused FPL not to earn the base rate revenues needed to recover normal operating and maintenance costs. As an offset, the PSC allowed FPL to recover $33.8 million in operating and maintenance costs as an offset to lost revenue.[69]

2. Allocation of Premiums

Another factor in the fund establishment is how to allocate the cost of the fund to specific utilities. One possible method of allocating these costs is based on the possible exposure of each utility. For example, one way to measure such exposure is to take the number of miles of above and below ground facilities in a given area (i.e. zip code, county-similar to the property CAT Fund) and the relative risk of each given area through an actuarial study.

Another method of premium allocation could be charging each company on a per customer basis. This method would be relatively easy to administer, but would not be relative to the company's risk. Customers of a company with most of its facilities inland would be subsidizing the customers of a utility with a large coastal exposure.

3. Fund Administration

If a catastrophic fund for utility and telecommunications companies is established, a fund administrator will need to be designated. One approach could be a collaborative effort between the PSC and the SBA. PSC staff generally does not have a background related to insurance issues, but it has expertise in utility regulation. The SBA generally does not have a background in utility regulation, but it has expertise in insurance issues.

A concept could be developed similar to the siting of electric facilities. The PSC could make a need determination, for example, for the amount of storm related costs prudently incurred by a company. Then the SBA could administer the reimbursement or the disbursement of funds. Timeframe constraints for making determinations and disbursement would also be imposed.

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[67] The PSC rule addressing the Accumulated Provision for Property Insurance is 25-6.0143(1), F.A.C.
[68] PSC Order No. PSC-05-0748-FOF-EI, issued July 14, 2005.
[69] PSC Order No. PSC-05-0937-FOF-EI, issued September 21, 2005.

Another route is the establishment of a new agency or a section within the PSC or SBA with an accumulation of staff with expertise in both areas.

4. Operating Costs Considerations

In establishing a fund, there are certain administrative costs to be considered. There will be initial cost for setting up the fund, securing consultants and actuaries for assessing the relative and total risks of the various companies. Other associated costs that may be incurred include contract administration, investing, record examiners, as well as ongoing general administrative and operating costs.

With the CAT Fund, the monies taken into the fund can only be spent to 1) pay obligations related to reimbursement contracts, 2) pay debt service on revenue bonds, 3) pay the cost of the mitigation program, 4) the cost of reinsurance, and 5) administrative costs. The earnings from the funds investments are retained by the fund.[70] For the year ended June 30, 2004, the CAT Fund had $3.9 million in operating expenses, including administrative costs, actuarial fees, personnel expenses, and other professional fees.[71]

According to the administrators of the CAT Fund, its outside providers of administrative, financial, actuarial consulting, and examination services are paid on fixed annual contracts secured through a competitive bidding process. However, when the CAT Fund was first established, service providers were compensated on an hourly basis.[72] This same premise would probably hold true for implementing a utilities and telecommunications CAT fund.

Based on estimated information provided by SBA staff, a utility/telecommunications CAT fund would require about $3 million in annual operating costs. Additionally, there would be about $1 million in start-up costs associated with establishing a new fund. If the new fund was to be administered by the SBA CAT Fund staff, three additional positions would be required.[73]

5. Cost Recovery for Participating Companies

When establishing a CAT fund, consideration for the various legal and legislative aspects of cost recovery come under scrutiny. It is these varying aspects that make it indeterminate as to whether or not industries could absorb fund participation.

For example, most incumbent telecommunications companies are price cap regulated, and they will not be able to adjust their rates to recover the costs associated with the fund without a change in legislation.

Additionally, the investor-owned electric utilities have their rates regulated by the PSC and may be able to seek cost recovery from the PSC through a surcharge or other method for their fund contributions. However, stipulated agreements concerning the

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[70] S. 215.555(3), F.S.
[71] Audited Financial Statements for the Florida Hurricane Catastrophe Fund, Years Ended June 30, 2004 and 2003.
[72] Telephone conversation with Florida Hurricane Catastrophe Fund staff.
[73] Telephone conversation with Florida Hurricane Catastrophe Fund staff.

base rates of the electric utilities may limit their ability to petition the PSC for a rate increase prior to the expiration of the stipulation.

Moreover, if the fund is supported through some sort of additional charge on customer bills, factors for considerations include:

-With the current telecommunications statute related to storm recovery, it limits the storm surcharge to 50 cents per month for a maximum of 12 months.[74] Additionally, the electric utility surcharges are for a fixed period of time. Customer surcharges for fund contributions would be perpetual or until such time circumstances dictate otherwise.

-With the state geographical distinctions, inland versus coastal, consideration for whether industry customers are paying into the fund in proportion to company risk exposure.

-If a surcharge is only applied to incumbent telecommunications carriers there may be some competitive concerns about the surcharge not being applied to all the other types of telecommunications carriers. While there are some facilities-based CLECs, most carriers lease components of the network from the incumbent carriers. One way to address this inequitable application of a surcharge is to assess the surcharge on an access line basis similar to the E911 fee.[75]

6. Requirements for Making Application to a CAT fund

The scope and requirements for making application for reinsurance funds is another critical issue. Currently, there are five investor-owned electric utilities with the means to establish storm accruals through the PSC. The municipal electric utilities and electric cooperatives generally do not have reserves, but they are eligible to receive funds from FEMA. One idea, similar to the retention component of the CAT Fund, there should be some guidelines relating to a threshold point when participants would be able to obtain monies from the fund. These guidelines would include a prudence or reasonableness determination.

For investor-owned electric utilities, it could be when their reserves are exhausted. For municipal electric utilities and electric cooperatives, they could be allowed to make application for funds in excess of their FEMA reimbursements.

Telecommunications companies do not accrue storm reserves. Since nine of these companies are under price cap regulation, they are not subject to any earnings review by the PSC. Additionally, the price regulation statute[76] exempts price regulated companies from several pricing and reporting statutes.[77] Without a statute change that reverts to an earnings review, the PSC probably would not be able to require these companies to establish reserves for storm damage.

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[74] S. 364.051(4)(b), F.S.
[75] The 911 Fee is addressed in s. 365.171(13), F.S.
[76] S. 364.051, F.S.
[77] Price regulated telecommunications companies are specifically exempt from the following statutes: ss. 364.03, 364.035, 364.037, 364.05, 364.14, 364.17, and 364.18, F.S.

If telecommunications companies are required to participate, consideration should be given to require that the companies spend a minimum amount per access line on storm recovery. For instance, if it is decided that the appropriate amount is $5 per access line for storm recovery, and the company has one million access lines, the company would have to spend $5 million in storm recovery before applying to the catastrophic fund. Plus, in order for method to mimic the storm reserve of the electric utilities, the minimum could be cumulative. Using the previous example, if the company spends $1 million one year, it now must spend $9 million ($5 million annual plus $4 million from the previous year) prior to obtaining funds from the catastrophic insurance fund.

7. Public Records Exemption

In obtaining the information from data requests, a few companies had concerns about the confidentiality of the data being requested. There are currently statutes that allow for the protection of proprietary confidential business information provided to the PSC. The statutes define proprietary confidential business information to include, but does not limited to:

a) Trade secrets
b) Internal auditing controls and reports
c) Security Information
d) Bids and contractual data which would impair the company or affiliates to contract for services
e) Certain employee personnel information[78]

In order to alleviate the concerns of the companies, one may want to consider a public records exemption for some or all of the information provided to the fund administrators.

8. Legislative Considerations

Through staff findings, it appears that a minimum of three legislative changes would need to occur, absent the needed changes to current regulatory and statutory provisions. First, legislation would be needed to establish the fund and any legal requirements regarding the fund. This legislation may or may not be similar to the s. 215.555, F.S., which sets up the CAT Fund for property insurance. Secondly, a trust fund should also be established in order to set aside the monies paid into the fund for approved catastrophic events. Lastly, since the administrators of the fund may require sensitive company information in order to establish appropriate rates, legislation will be needed for a public records exemption.

Advantages and Obstacles to Implementing a CAT Fund for Utilities and Telecommunications

In order to decide whether or not to establish a catastrophic insurance fund, one must explore the most obvious advantages and obstacles to implementation.

[78] See s. 364.183(3), F.S. for telecommunications companies and s. 366.093(3), F.S. for public utilities. The wording of these sections is almost identical.

Advantages to Implementation

The primary advantage to such a fund is that there will be a large cash reserve, possibly with bonding authority in order to help utility and telecommunications companies further mitigate the costs associated with storm recovery. If there were no legal or regulatory restraints, the companies could pass the costs onto their customers through an adjustment in rates.

Obstacles to Implementation

One obstacle to implementing a fund is that there are legal or regulatory restraints that would prohibit utility and telecommunications companies from adjusting their rates in order to recover the fund costs from their customers.

Another obstacle, nine of the ten incumbent local exchange carriers are under price-cap regulation and that limits their ability to raise rates. For the investor-owned electric utilities, some of them operate under rates and/or storm-recovery stipulations which limit their ability to adjust their rates during the duration of the stipulation.[79]

Lastly, there will be administrative costs associated with this fund that are not being incurred at this time by ratepayers. While the fund is being established, the impact to ratepayers may be significant considering the imposition of the initial administrative costs, other current surcharges (i.e. hurricane recovery), and the recovery amount for industry contributions to the fund.

Revamping Current Mitigation Options

Although beyond the scope of this comparative assessment, some of the data were used in contrast with other ideas to determine if any options other than a CAT fund may be used to address lessening the consumer impact of storm cost recovery. The idea of revamping current mitigation options arose; however, these ideas would require additional economic analysis. For example:

1. Updating Storm Accruals

A more frequent updating of annual accruals to the storm reserve for electric utilities is one meritorious consideration. For Progress its annual $6 million accrual was established in 1994, and FPL's $20.3 million accrual was set in 1995.[80] Since 1995, both FPL and Progress have had their customer bases increase by about 21 percent.[81]

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[79] FPL's and Progress's current stipulations do address storm cost recovery. FPL's stipulation allows it to petition the PSC to replenish its storm reserve and/or recovery storm related costs in excess of its reserves through either securitization or a separate surcharge. Similarly, Progress's stipulation allows it to petition the PSC to securitize its storm reserve deficiency and/or replenish its storm reserves or increase its base rates or impose a separate surcharge to accrue reserves for non-catastrophic storms. TECO's and Gulf's storm-recovery stipulations limit their ability to request an increase in base rates and/or surcharge to an actual storm events.

[80] For Progress see PSC Order No. PSC-94-0852-FOF-EI, issued July 13, 1994. For FPL see PSC Order No. PSC 95-1588-FOF-EI, issued December 27, 1995.

[81] Florida Public Service Commission, *Statistics of the Florida Electric Utility Industry 2004*, September 2005.

With the increase in customer base comes an increase in facilities to provide service. Based on the customer increase and recent increase in storms, these levels may not be appropriate to maintain at this time.

Pursuant to rule 25-6.0436(8)(a), F.A.C., the PSC currently requires the electric utilities to file depreciation studies at least once every four years. Under its ratemaking authority, the PSC could, by rule, require the electric utilities to file studies to determine the appropriate storm reserves at more frequent intervals.

2. Storm Recovery Rules

For the electric utilities, the PSC could establish rules addressing storm recovery. This will provide guidance to the utilities as to which costs would be recoverable through the storm reserve or any other storm recovery mechanism. The rules could also address whether or not some of the storm-related costs should be bore by the stockholders. For instance, in Gulf's surcharge stipulation, it agreed to place an additional $14 million into its storm reserve. This had the effect of Gulf absorbing some of it storm-recovery costs. Gulf's ability to do so was due to it exceeding its authorized return on equity, and the additional accrual brought it close to the mid-point of its authorized range for rate of return.[82]

Additional rules may address 1) a minimum dollar threshold before a company can charge weather related costs to the storm reserve. Such as, similar to the storm recovery surcharge statute for the telecommunication companies, the rules could establish a minimum dollar threshold based on the number of company customers; 2) require the weather event to cause a minimum percentage of customers to lose power.

3. Damage Mitigation Program

Another idea that may reduce the amount of storm costs and customer outages related to storm damage involve the PSC along with the companies could establish a damage mitigation program. Although the companies have such programs, a collaborative effort may further reduce the amount of damage and customer outages. While it is not practical to avoid all storm related damage, such a damage mitigation program could speak to issues of vegetation management and pole inspection to potentially reduce customer outages, facilities damage and increased reliability.

The PSC could consider establishing rules requiring the utilities to file with the PSC copies of their various programs. These reports would include documentation concerning how on-schedule the utility is with its various programs, and what corrective actions, if any, were taken as a result of the various programs. The PSC could also establish rules prescribing regular pole inspections or a specific vegetation management program.

Current PSC rules for electric utilities require each utility to develop an inspection program for its electric plant. The rule prescribes that the frequency of inspections "shall be based on the utility's experience and accepted good practice."[83] The PSC requires the incumbent local exchange telecommunications companies to "adopt and pursue a

[82] PSC Order No. PSC-05-0250-PAA-EI, issued March 4, 2005.
[83] S. 25-6.036, F.A.C.

maintenance program aimed at achieving efficient operations of its system as to permit the rendering of safe, adequate, and continuous service at all times."[84] These rules could be reworked to include a more streamlined effort towards specific goals for damage control

One thing to consider with a damage mitigation program is that electric utilities and telecommunications companies often share poles with the pole's owner being responsible for their maintenance.[85] Therefore, one's electricity could be out due to a broken pole owned by the telephone company, or vice-versa.

4. Establishing Storm Recovery Clauses

Depending on the intensity of future hurricane seasons, it may be appropriate to consider establishing a storm recovery clause. This mechanism may be used to allow the electric utilities the ability to establish an annual storm recovery charge based on current conditions and the amount of storm related costs in the past. This clause could also be utilized to have the storm related costs of one year amortized over several years in order to minimize the rate impact of a particular storm.

The electric utilities have various cost recovery clauses that are utilized to recover the more volatile costs of operating an electric utility. These clauses are used for such items as fuel costs, purchased power, and environmental costs. These costs are adjusted every year based on the forecasted costs for the coming year and any over or under recovery from prior years. The utilities do not make a profit from the costs recovered through these clauses.

In order to recover from the 2004 hurricanes, Progress filed a petition with the PSC requesting a time limited storm recovery clause. In its order, the PSC refused to establish a time-limited storm recovery clause and instead established the surcharge.[86] The order points out that in the past, the PSC has used these clauses to recover ongoing costs whose volatility is out of the utility's control, but not for extraordinary costs such as storm damage.

5. Cost Deferrals or Expensing

In some other states, electric utilities do not have storm reserves, but state regulators have allowed electric utilities to reduce the financial impact of storms by deferring some or all of their storm related costs. With a deferral, the storm related costs are amortized over a given number of years. The deferred storm costs are then either recovered through a surcharge or through a reduction in earnings in each of the years the costs are deferred. [87]

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[84] S. 25-4.069, F.A.C.
[85] John Dorschner, "Blackout clues may lie in graveyard.'" *The Miami Herald*, November 26, 2005.
[86] PSC Order No. PSC-05-0748-FOF-EI, issued July 14, 2005.
[87] Bradley W. Johnson, *After the Disaster: Utility Restoration and Cost Recovery*, prepared for the Edison Electric Institute, February 2005.

Other state jurisdictions have required the payment of storm related costs through the current year's earnings.[88] With this method, the only years that would have a storm related earnings impact are those in which storms occurred. The downside to this method is that it would make the company's earnings more volatile than they would be with other methods of recovery.

With their current ratemaking authority, the PSC could allow an investor-owned electric utility to utilize either one of these methods to recover its storm costs.

6. Wait and See

Another approach is to "wait and see." In 2004, the Legislature gave the PSC authority to consider for approval petitions by electric utilities to issue bonds for storm cost recovery. The PSC was also granted authority to consider petitions by incumbent telecommunications companies to recover storm related cost through a 50 cent per month surcharge for 12 months. At this time, no company has received relief under either of the new laws.[89] Therefore, we do not know how well these approaches will work in the recovery of storm related costs. Once these approaches have been utilized, we may have a better understanding as to whether additional legislative relief is warranted.

Additionally, to implement a utility and telecommunications CAT fund using a surcharge or other rate adjustment may be perceived as yet another rate increase. Subsequent to the approval of their storm surcharges, the investor owned electric utilities have requested significant increases in their customer fuel charges due to their skyrocketing fuel costs. On November 9, 2005, the PSC approved the annual fuel adjustments for the investor owned electric utilities. For 1000 kWh of use, the increase ranged from $4.57 for Gulf to $16.99 for FPL[90]

On November 1, 2005, BellSouth, Sprint, and Verizon were allowed to implement their first basic local service rate increases under s. 364.164, F.S. This section allows incumbent telecommunications companies to reduce their intrastate switched network access rates to parity[91] with their interstate switched network access rates, as well as increasing their basic local telecommunications service rates in a revenue neutral manner. Section 364.051(6), F.S., provides that once a LEC with more than one million access lines reach parity, it may elect to have its basic local service be subject to the same regulatory treatment as its nonbasic service.[92]

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[88] Bradley W. Johnson, *After the Disaster: Utility Restoration and Cost Recovery*, prepared for the Edison Electric Institute, February 2005.

[89] On January 13, 2006, FPL filed a petition with the PSC requesting a storm recovery financing order pursuant to s. 366.8260, F.S. The PSC is scheduled to issue the financing order on May 30, 2006. (FPSC Docket No. 060038-EI).

[90] Public Service Commission News Release *Fuel Adjustments Set for Electric Utilities*, November 9, 2005. http://www.floridapsc.com/general/news/pressrelease.cfm?release=43

[91] Section 364.164(5), F.S., defines "parity" as "the local exchange telecommunications company's intrastate switched network access rate is equal to its interstate switched network access rates in effect on January 1, 2003" for companies with 1 million or more access line. Parity is defined as 8 cents per minute for companies with less than 1 million access lines.

[92] S. 364.051(6), F.S. Section 364.051(5)(a), F.S., allows the price for nonbasic services to increase by up to 20 percent in a 12-month period.

The PSC has less regulatory oversight over telecommunications providers than it does over the electric utilities. The incumbent telecommunications carriers are competing with competitive providers, wireless providers, and Voice over Internet Protocol (VoIP) providers. Section 364.011, F.S., specifically provides that broadband services, VoIP, and wireless services are generally exempt from the PSC's jurisdiction.[93] With competing services being under less federal and state regulation than the incumbent local exchange carriers, and the trend towards a less regulated environment for those carriers, the costs associated with a catastrophic fund may be perceived as an additional regulatory burden on incumbent carriers.

Pending Discussions

At this time there are various discussions taking place concerning energy policy and electric infrastructure in Florida. On November 10, 2005, Governor Bush issued an Executive Order concerning energy policy.[94] The Executive Order requires the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. The energy plan is to address various aspects of energy policy including the generation, transmission, and distribution of electric power. As required by the Executive Order, the DEP released Florida's Energy Plan on January 17, 2006.

The President of the Senate has also asked the Senate's Committee on Communications and Public Utilities to "work on creating a structure and process that will be able to develop a statewide energy policy and then manage that policy into the future."[95] The President of the Senate requests that this work be done in time to be addressed during the 2006 legislative session.

On January 23, 2006, the PSC conducted a workshop that explored ways to build additional electric facilities to minimize long term electric outages and storm restoration costs. Among the topics discussed at the workshop were current utility practices, issues related to the undergrounding of electric utilities, and what are the options for minimizing storm related outages. Included in the discussion was how the cost of undergrounging electric lines or conforming to new standards would be recovered.[96] PSC staff is scheduled to give the Commissioners recommendations for further action at the PSC's February 27, 2006, Internal Affairs.

Bills have also been filed for the 2006 legislative session to require various studies of the electric utility industry. Senate Bill 680 requires the PSC to conduct a study of the electric utility transmission system, and to recommend potential system improvements in order to decrease storm damage and improve emergency response to such damage. This bill would require the PSC to issue a report of its findings by March 1, 2007.

Senate Bill 794, establishes the Utility Preparedness Task Force to evaluate the current electric transmission system, determine the feasibility of upgrading the electric and

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[93] S. 364.011, F.S., specifically states that these services are exempt from PSC oversight "except to the extent delineated in this chapter or specifically authorized by federal law."
[94] Governor's Executive Order No. 05-241, issued November 10, 2005.
[95] October 17, 2005, letter from Senator Tom Lee, President of the Senate, to Senator Lee Constantine, Chair, Senate Committee on Communications and Public Utilities.
[96] Public Service Commission, Internal Affairs Agenda for November 29, 2005. Attachment A to Agenda Attachment 2.

telecommunications transmission systems, analyze the best way to protect electrical transformers, and determine the cost effectiveness of requiring underground electric utility facilities for all new construction and converting overhead facilities to underground facilities when they are replaced or relocated among other things. The bill requires the task force to meet within 60 days of the effective date of the act and to issue a report no later than 120 days after its first meeting.

With these ongoing discussions and pending legislation, other mitigation options may come to fruition concerning ways to address hurricane damage or to strengthen the integrity of the electric and/or telecommunications systems.

Conclusion

In conclusion, establishing a utility and telecommunications catastrophic reinsurance fund at this time appears premature with the current ongoing discussions and pending legislation. Ratepayers for both industries may already incur several surcharges related to hurricane recovery from the mechanisms passed during the 2005 Legislature. To compound that possibility with an additional pass through charge on ratepayers for the companies' contributions into the utility and telecommunications CAT fund appears contrary to House principles at this time. However, in perpetuating the House principles of empowering families, ensuring lower taxes, while maintaining public security, the concept may warrant revisiting in the future.